

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Commonwealth Edison Company Petition</b>	<b>)</b>	
<b>for approval of delivery service tariffs and</b>	<b>)</b>	
<b>tariff revisions and of residential delivery</b>	<b>)</b>	
<b>services implementation plan, and for</b>	<b>)</b>	<b>Doc. No. 07-0566</b>
<b>approval of certain amendments and</b>	<b>)</b>	
<b>additions to its rates, terms, and conditions</b>	<b>)</b>	

**REPLY BRIEF OF  
THE UNITED STATES  
DEPARTMENT OF ENERGY**

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## **REPLY BRIEF OF THE UNITED STATES DEPARTMENT OF ENERGY**

Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), the United States Department of Energy ("DOE" or "the Department"), by its attorney, submits this Reply Brief in the above-captioned proceeding.

**INTRODUCTION** This brief is structured as per the outline that the Administrative Law Judges promulgated herein. It addresses only subjects that DOE addressed herein, and addresses those subjects in the outline's required order. For that reason, it begins with the outline's section VIII.

### **VIII. COST OF SERVICE AND ALLOCATION ISSUES**

#### **C. Embedded Cost of Service Study Issues**

**C. 1. Appropriate Study** - As discussed in the DOE's initial brief, there are two tests of a cost of service study's validity: (1) results; (2) methodology. (DOE Initial Brief, p. 4 *et seq.*) As that brief demonstrated, Commonwealth Edison Company's (Com Ed or the Company) cost of service study drives proposed rates that are much in contradiction of the general rule that unit costs decrease, and rates should therefore decrease, as customer size increases. (see, e.g., I.C.C. Doc. 05-0597, July 26, 2006, p. 196) The Company asserts that the Commission should nevertheless adopt the study. (All references to a "cost of a service study" refer to the Com Ed updated cost of service study unless noted.)

Com Ed has tried to present the study's results as acceptable. Company witness Crumrine actually asserted that the study produces no anomalous or illogical results at all. (T-1111) Company witness Alongi, confronted with the fact that the study "demonstrates" that serving one unit at a voltage level of 100 kW is \$.75 cheaper than serving one unit at 10 mW, insisted that these are "credible figures." (T-2089) Mr. Crumrine asserted that the study is "extensively supported," (Com Ed Exh. 43, p. 31) but then admitted that this "extensive support" consists entirely of Com Ed testimony. (T-1109)

Com Ed also asserted that "the evidence shows" that, under its present rates, medium-sized commercial and industrial customer are subsidizing larger customers, (Com Ed Initial Brief, p. 9) and that this indicates that the inapposite rates and rate increases that the study drives are necessary to cure these supposed subsidies.

In fact, the only "evidence" that any such subsidies exist is the Company's cost of service study. Moreover, *the Company itself acknowledges that the study is so structured as to make it inevitable that a great many dollars of secondary distribution costs are allocated to large customers who do not use the secondary distribution system.* (T-2023, and see DOE Initial Brief, p. 4 *et seq.*) When this misallocation is corrected, there remains no evidence whatsoever of the existence of these alleged subsidies. This misallocation can be removed by distinguishing customers on the basis of the voltage levels at which they take service. As discussed below, the Illinois Industrial Energy Consumers (IIEC) presented a study that does this. Moreover, Com Ed does not deny that it is capable of doing this far more completely and accurately.

In support of its view that subsidies exist, the Company alleges that a 2005 Commission order "expressly created" subsidies. (Com Ed Exh. 11.0, p. 6) This is not accurate. In fact, in its 2005 order on rehearing, the Commission directed the Company to set revenues for the High Voltage classes and the Extra Large Load class across the board, at the overall percentage increase. (I.C.C. Doc. 05-0597, July 26, 2006, p. 196) This created revenue shortfalls, because the across the board increases were not as large as the rates the Company proposed. The Commission directed the Company to cure those shortfalls by collecting additional dollars from all the other nonresidential classes. The Company's view is that the Commission "expressly created" subsidies by requiring the other nonresidential classes to make up the shortfalls.

This view ignores the dispositive fact that a revenue "shortfall" does not in and of itself constitute or create a revenue "subsidy." Rather, a subsidy is created when:

- (1) a valid cost of service study shows that certain costs are rightly allocated to a certain ratepayer class, because that class "caused" those costs;
- (2) the same costs are allocated to a different ratepayer class, to which those costs are *not* rightly allocated, because the study shows that that class did *not* "cause" those costs.

Thus, the Commission did not order any subsidies. All the Commission told the Company was, in effect: "The number of dollars you plan to allocate to the Extra Large Load class and the High Voltage classes would create rates that are higher than the system average increase that we are ordering. So, we direct you to reallocate, to the other nonresidential classes, whatever number of dollars is required to bring the High Voltage class and the Extra Large Load class rates down to the system average."

**The Commercial Group** - The Commercial Group ("Group") agrees that DOE (DOE Initial Brief, pp. 2-12, 16), IIEC (IIEC Initial Brief, pp. 52-62), Nucor (Nucor Initial Brief, pp. 2, 3, 7 *et seq.*) and REACT (REACT initial Brief, p. 25 *et seq.*) have pointed out serious flaws in the study, and that the Commission should require Com Ed to correct them in its next filing. (DOE Initial Brief, pp. 2-12, 16) In fact, the Group recommends that rates be based on a primary/secondary split. (Group Initial Brief, p.6 *et seq.*)

Quite at odds with this, the Group opines that the study is "generally reliable," and it discusses the supposed subsidies that the Medium, Large and Very Large Load Classes have been paying. (Group Initial Brief, pp. 6, 8 *et seq.*) Obviously, this contradicts the Group's acknowledgement that the study is greatly flawed. Because the cost study is so greatly flawed, and because it has been demonstrated that its flaws are the basis for the supposed existence of the subsidies, there is no valid basis to determine whether the alleged subsidies exist, let alone how much they are or who is paying them. It is understandable that the Group would like to gain the credibility that comes with its acknowledgement of the study's flaws, but benefit as well from the illogical results that those flaws produce. DOE respectfully suggests that the Group cannot have it both ways.

**Staff** - Staff finds that the study produces rate shock. (Staff Initial Brief p. 96 *et seq.*) It says that, because the cost of service study's *results* would produce rate increases for certain classes that ratepayers cannot rightly be asked to bear, there is no need even to address the question whether the study's *methodology* is acceptable.

**Conclusion** - The study's results are logically untenable. Its inherently and unavoidably flawed methodology produces dramatic and harmful cost mis-allocations. It would cause rate shock. Given all of this, the question is not whether there are grounds sufficient to reject the study, but whether there are any grounds at all to adopt it. The Department respectfully submits that the Commission should reject the study's results, and order that any rate increases be across-the-board, *even if* the Commission does not entirely accept DOE, IIEC and others' methodological criticisms.

### **C.2. PRIMARY/SECONDARY SPLIT**

(Please see DOE initial brief, p. 4 *et seq.*) The 2005 order spoke of "the fact" that high voltage customers do not utilize a significant portion of Com Ed's distribution system, and therefore have a lower cost of service. (I.C.C. Doc. 05-0597, July 26, 2006, p. 199) In failing to acknowledge this distinction between costs at varying voltage levels, the study does not merely ignore, but operates in flat contradiction of, this *fact*.

Testimony herein makes it difficult to understand why the Company's study omits this vital distinction. Attorney General (AG) witness Rubin testified that, if a cost study does not separate primary and secondary costs, it is "extremely likely" that the study assigns secondary costs to customers who do not use the secondary system. (T-913, 914) Company witness Crumrine went still further:

Q - Is it not improper to allocate costs of secondary distribution systems to customers who take (service) in a manner that precludes their ever using, or benefiting from or driving the cost of, that secondary system?

A - I would say that if those costs can be broken out, it would be improper to allocate them to the larger customers. (T-1600)

Thus, the Company itself has acknowledged that failure to allocate costs on the basis of voltage levels is "improper." Its only stated hesitation is the matter of whether "those costs can be broken out." This leaves the question: *Can* these costs be broken out?

Company witness Heintz asserted that these costs cannot be broken out because the Company's books are not separated between primary and secondary facilities and operations. (T-2012) But he admitted that he has no experience in doing primary/secondary breakdowns, and that he never even looked at the Company's accounting system. (T-2009, 2015)

Even if the Company's books are not organized by voltage levels and it is too cumbersome to re-organize them on that basis, the Company can readily develop reasonable estimates of the primary/secondary split. IIEC did this in the present

proceeding. (see *infra.*) The Company could do it more completely and accurately, because it has access to all the data. DOE witness Dr. Swan pointed out that estimates are used regularly in developing cost studies. (DOE Exh. 2, pp. 12-13) It would be far better for the Commission to order the Com Ed to perform an estimated primary/secondary split than to allow it to continue to ignore the matter.

Company witness Heintz argued that, although it is *possible* to perform this split, the cost would outweigh the benefit. (Com Ed Exh. 33, pp. 3,4) However, he admitted that he had not examined the potential cost or the work time that would be required. Moreover, he could not give even a ball park figure for the costs, or provide "any sense" of the time required. Indeed, he admitted that no one at Com Ed made any effort to determine what these costs would be. (T-2015, 2016, 2020) Thus, the Company is arguing that, although it has made no effort to determine, and it does not know, and the cost of making the primary/secondary split, the unknown cost would outweigh the obvious benefit.

Taking a different tack, the Com Ed argues that the various interveners' proposed modifications to the study are designed to shift the burden of cost recovery away from them. (CE Initial Brief, p. 101) DOE would respectfully reply that, for the Company, cost allocation among ratepayer classes is a zero sum game. That alone may go a long way toward explaining why the Company seeks to avoid bettering the accuracy of its cost allocation. But cost allocation is not a zero sum game for large ratepayers. To some, cost allocation can mean hundreds of thousands or even millions of dollars annually. These customers strongly take issue with the Company's insistence that they pay enormous percentage rate increases on the basis of a study that has been shown to include flaws that themselves *create* the supposed bases for those increases. The interveners ask only that the Commission require the Company to exorcise those errors, and by so doing produce a study that is a proper basis for cost-based rates.

#### **Other parties' views of the primary/secondary split**

**The IIEC Study** - IIEC filed a very useful cost study. (IIEC Exh. 3.0) That study is critically important because, unlike the Company's study, it includes a rough estimate of the primary/secondary split. It dramatically demonstrates the vastly different cost responsibilities, and the consequently vastly different rates and rate increases that result from that split in the cost of service study.

DOE believes that, regrettably, the IIEC study is not accurate enough to provide the basis for making rates. Lack of detailed class cost data in Com Ed's study required IIEC witness Mr. Stowe, in developing the study, to use certain estimates, and to use apparently erroneous Com Ed class demand units. IIEC itself acknowledges that its study "...is less precise than IIEC would like and less accurate than the methodology improvements (IIEC supports) are capable of providing." (IIEC Exh. 1.0, p. 16)

In opposing the IIEC study, Com Ed asserts that its 50% mitigation proposal, discussed in section E.2., *infra.*, would produce rates for the largest customer classes that do not exceed the rates that would result from incorporating IIEC's primary/secondary split into

the cost of service study. (Com Ed Initial Brief, p. 93) This is technically correct. It omits, however, the fact that IIEC's proposal includes not only the primary/secondary split, but also a minimum distribution system (MDS) adjustment. Company witness Alongi admitted that, when both these adjustments are acknowledged, the IIEC plan produces lower rates than Com Ed's 50% mitigation plan for the extra large load class and the railroad class. (T-2099 *et seq.*)

## **E. Interclass Allocations Issues**

**1. Across-the-Board** - Staff, DOE, IIEC and Nucor all favor across the board increases. The Company argues that such increases would exacerbate existing subsidies, create new subsidies, and shift millions of dollars from residential to nonresidential. (Com Ed Initial Brief, p. 99)

The difficulty with these arguments is that the existence of subsidies, the exacerbation of any extant subsidies, and the creation of any new subsidies, are phenomena that can be demonstrated only on the basis of a valid cost study. As has been demonstrated, no such study presently exists. The Company's study is fraught with methodological errors which produce allocations that are the very opposite of cost-based. Those allocations produce rates and rate increases contrary to generally-accepted rules and demonstrable rate relationships. Those rates and rate increases produce rate shock.

**The Attorney General's Position** - The Attorney General's (AG) brief reflects an apparent misunderstanding of DOE's position. It states that DOE (and others) favor across the board increases only for certain non-residential classes. (AG Initial Brief, p. 79) That is not DOE's position. Rather, DOE agrees with the AG's assertion that, if the cost study is flawed, all customer classes should receive the same percentage increase.

The AG then goes on to say that the Company's cost study "adequately allocates costs to the customers who cause those costs and does not allocate them in an arbitrary or discriminatory manner between classes." (AG Initial Brief, p. 80) This apparent endorsement of the study, however lukewarm, is much at odds with the testimony of the AG's own expert witness, Mr. Rubin. Mr. Rubin testified that the study definitely has "fundamental problems." (T-905) He further testified that other witnesses had presented issues regarding the study's validity that he had not "focused on" or "evaluated in any detail." (T-905, 906) Mr. Rubin testified only that he had not determined whether the sum of all of these problems was so damaging as to require that the Commission reject the study in favor of across the board increases. (T-905) He did not endorse the study.

## **E. 2. Other Rate Moderation/Mitigation Proposals**

The Company recommends that the Commission adopt the study, together with a plan under which rate increases would be limited to 50 % of those dictated by the study, with additional 50% increases in the Company's next rate distribution case, likely within a year or two. (Com Ed Exh. 11.0, pp. 2, 50 *et seq.*; Com Ed Initial Brief, p. 9) The Company argues that this mitigation plan would be better than across the board increases, because it

is "consistent with moving toward cost based rates" and would send a "strong signal" that the Commission expects prices to reflect costs. (Com Ed Exh. 30.0, pp 50 - 51) Obviously, adoption of the Company's recommended rate increases, and the issuance of a "signal" that the Commission thinks that those rates reflect costs, would be entirely dependent upon the supposition that the cost of service study constitutes a valid cost basis for those rates. As demonstrated above, no such supposition may validly be made.

Next, the Company argues that its plan "addresses rate shock." (Com Ed Exh. 30, p. 51) DOE respectfully asserts that this is not so. If adhered to, the Company's proposed rate increases, even reduced by 50%, would necessitate immediate increases of approximately 71% for Extra Large Load customers, 47% for High voltage customers over 10,000 kV, and 62% for High Voltage customers with loads up to 10,000 kV. (DOE Exh. 2.0, pp 26 - 27) Then, just a year or so later, it would necessitate additional increases of similar magnitude. No fair person can conclude that such a plan will "avoid rate shock."

In sum, the Commission is aware that:

- (1) the cost of service study vastly mis-measures cost of service and burdens various ratepayer classes with costs that they do not cause;
- (2) the rates and rate increases that fall out of the study violate basic ratemaking principles;
- (3) those rates and rate increases would cause severe rate shock.

These are critical problems. The Company is asserting that the Commission should meet these problems by:

- (1) adopting the flawed cost of service study instead of mandating that it be corrected;
- (2) adopting the illogical rates and rate increases that fall out of the study;
- (3) addressing the resultant severe rate shock by imposing 50% of those increases right away, and 50%, plus more, very soon after.

DOE respectfully submits that this plan in no way constitutes cost-based ratemaking. It is, at best, a promise to do the wrong thing gradually.

**Kroger's view of the Company's mitigation plan** - Kroger argues that the Company's 50% mitigation proposal is inapposite because it would mitigate rate increases for some classes whose rates are presently lower than those of other classes whose rates it would not mitigate. (Kroger Initial Brief, pp.8 - 9) This misses the point. The purpose of a mitigation proposal is to lessen rate increases for the hardest hit classes, in order to avoid rate shock that those classes would experience if those increases were effectuated all at once. Thus, mitigation proposal properly applies only to classes which are so situated.

Kroger also argues that, although the classes that are targeted for mitigation would receive "very substantial" percentage rate increases, their resultant rates would still be lower, for the most part, than the rates of the non-residential classes that would continue to "be burdened with the subsidy." (Kroger Initial Brief, p. 8) This is inapposite for two reasons: First, the purpose of a mitigation plan is to mitigate large sudden increases, not to bring rates of various classes in line relative to one another. Second, the notion of Kroger or any of the classes being "burdened with the subsidy" is entirely dependent upon there being a subsidy. As discussed earlier, there is no evidence that any subsidy exists, except the Company's defective study. Rather, the facts strongly suggest the opposite.

**Staff's Proposal** - Staff witness Luth proposed that rates for Medium Load, Large Load, Very Large Load, Extra Large Load, and High Voltage (Other) classes all be set at the same level of \$5.85/kW-month. (Staff Exh. 6.0, p. 9) He said that this would mitigate the very large increases for Extra Large Load and High Voltage (Other) classes.

This would provide little rate shock relief for the Extra Large Load and High Voltage (Other) classes. The increases for those two classes would still be 138% and 164%, respectively. It would provide no relief for High Voltage customers with loads in excess of 10,000 kW, leaving them with an approximate 90% increase. (Swan Rebuttal, page 26) Moreover, although per unit cost is lower for standard voltage customers with loads in excess of 10,000 kW and high voltage customers with loads up to 10,000 kW than for Medium Load customers with loads between 101 kW and 400 kW or for Large Load customers with loads between 401 kW and 1,000 kW, the Luth proposal would have all of those classes pay the same rate. (DOE Exh. 2.0, p. 26.)

Kroger presented a modified endorsement of Mr. Luth's proposal. It attempted to support the Company's study by arguing that relative diversity accounts for the study's otherwise counterintuitive results. It said, in effect, that the reason the Medium class has a lower per-kW cost than the Large class may be because the Medium class has greater relative diversity. It argued that Mr. Luth's proposal for equal charges for all standard voltage classes is reasonable, because diversity benefits should be shared by all. (Kroger Initial Brief, p. 6 *et seq.*)

Dr. Swan has addressed this. He said that there may in fact be greater diversity among customers of smaller sizes, and that greater relative diversity would reduce the average unit cost per kW relative to other classes. However, he further stated that it is highly unlikely that any such greater diversity among the smallest size categories (i.e., 0 kW to 100 kW) could overcome the countervailing effect of those classes being responsible for all of the costs of the distribution system. (DOE Exh. 1.0, pp. 14 -15) No party, including Kroger, has contested Dr. Swan's view. Thus, greater relative diversity among smaller size categories does not justify the counterintuitive results obtained in the Company's cost of service study, and does not support Staff's proposal.

## **IX. Rate Design**

### **O. Rate Design Issues**

**2.c. Primary and Secondary Billing Proposal** - Twenty-nine Com Ed customers who take service at a level of 69 kV or greater also have additional but separate loads that take service at levels below 69 kV. (T-2082) Com Ed presently charges these customers the same rates per unit for their below-69 kV loads as it does for their 69 kV-or-greater loads.

By billing these customers' below-69 kV loads at the same rate as it bills their 69 kV-or-greater loads, the Company is billing all of these customers' below-69 KV loads *at the wrong rate*. No one disputes the fact that the costs of serving these customers' two different loads at two different service levels unequal. These particular below-69kV loads are being billed at 69 kV-or-greater rates only because they happen to be loads of customers which also take service at 69 kV-or-greater rates. The effect is that customers which take service at 69 kV-or-greater but do not have separate load that take service at below-69 kV are subsidizing customers which take service at 69 kV-or-greater and do have separate loads that take service at below-69 kV. (DOE Exh. 1.0, pp. 20, 21)

To remedy this, the Department proposes that the Company be ordered simply to bill such customers' below-69 kV loads at the rates that would apply to those loads if these customers did not also have 69 kV-or-greater loads. DOE Exh. 1.0, p. 25)

The Company opposes this. It says, first, that the proposal would "create two distinct customers" for each of the 29 customers which has this kind of dual character load. (CE Initial Brief, p. 110) This is not compelling. A seller who charges one customer two different rates, for two different services that cost two different amounts to create, does not by so doing create two customers out of one.

Second, the Company testifies generally that it might be problematic to implement this proposal because there might be concerns regarding rate design and tariff terms, (CE Exh. 45.0, p. 14) and because the Company's computer system is "not programmed to determine a separate customer class for portions of a customer's loads." (T-2078) But Company witness Alongi admitted that all the Company would need to do to implement the proposal is reprogram its computers. (T-2079) He also admitted that the Company has made no effort to calculate the cost of doing that. (T-2079, 2083, 2086)

Moreover, nearly two years ago, the Commission directed the Company to bill the standard voltage loads of High Voltage customers separately so as not to extend the high voltage discount to the lower voltage loads. Specifically, the Commission stated that: "...Com Ed's proposal to extend the high voltage discount to service provided at standard voltage is rejected. Com Ed is directed...not to extend the high voltage discount to service provided at standard voltage." (Docket 05-0597, Final Order, p. 199)

When it became clear on rehearing that new rates were going to be implemented for High Voltage customers, the Company asked the Commission to delete this disaggregation requirement to facilitate expedited implementation of new rates by January 2, 2007. The

Commission granted this request, only for the limited purpose of facilitating implementation by that date. (Order, p. 67) That date is long past and the expedited facilitation is long completed. The Commission's mandate for disaggregation between higher and lower voltages remains. It should be reiterated herein, and enforced.

#### **(H) RECOMMENDATIONS**

(1) The Department respectfully recommends that the Commission direct the Company:

- (a) not to use the cost of service study as the basis to set rates in this proceeding;
- (b) to distribute any jurisdictional revenue increase that it may allow among the ratepayer classes on an equal percentage across the board basis;
- (c) to adjust its books to break down its distribution system as per Department's initial brief Sec. 5., p. 12;
- (d) to correct its study in its next distribution rate filing, break down distribution costs into primary and secondary voltage service, in addition to the extant High Voltage service.

(2) The Department further respectfully recommends that, if the Commission decides that the cost of service study should be the basis to set rates herein, it require the Company to:

- (a) adjust the study as recommended by Dr. Swan at DOE Exh. 1.0, p. 22 *et seq.*;
- (b) provide relief from rate shock by implementing Dr. Swan's proposal to move one-third of the way toward rates that are implied by the Company's cost of service study unit costs, adjusted for the two High Voltage classes to separate out the costs associated with serving the standard voltage loads of those customers, as per DOE Exh. 2.0, p. 27.

(3) The Department further respectfully recommends that, regarding customers who take service at levels of 69 kV-or-greater and have separate loads that take at levels below-69 kV, require the Company to bill each such separate below-69 kV load at the rate that that load would fall under if it were not attributable to a customer that also takes at high voltage.

(4) Finally, the Department respectfully recommends that the Commission:

- (i) adopt the Company's revised Rider ACT proposal, which contains only voluntary termination of the transmission ownership credits and closes the Rider to new customers;
- (ii) if it decides that Rider SEA should be implemented, adopt the Company's hybrid rate design for that rider.

Respectfully submitted,

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